

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

Chemung County Neighborhood Legal Services, Inc.,
Plaintiff,

v.

Social Security Administration,

Defendant.

Complaint

Case No.: 03-CV- 66572(F)

Introduction

1. The plaintiff brings this action seeking a Court order directing the defendant to comply with the plaintiff's request (copy attached) made on August 2, 2002 for information pursuant to the Freedom of Information Act (FOIA), which is codified in 5 USC §552, as amended by Public Law No. 104-231, 110 Stat. 3048, the "Electronic Freedom of Information Act Amendments of 1996." (EFOIA)

Jurisdiction

2. This Court has jurisdiction to review this case pursuant to 5 USC §552(a)(4)(B), 28 USC §1331 and 28 USC §1361.

Parties

3. Since 1967, the plaintiff is a non-profit, charitable corporation, incorporated in New York State, under the New York Not for Profit Corporations Law, and it is authorized under the New York Judiciary Law, by the New York State Supreme Court, Appellate Division, to represent poor people in the State of New York as a legal aid law office. Chemung County Neighborhood Legal Services, Inc. ("CCNLS") has its place of incorporation and headquarters offices in Elmira, New York, in the County of Chemung. CCNLS provides legal advice and representation to poor people who reside in the Counties of Chemung, Schuyler, Tioga and Tompkins. Among the hundreds of cases for which legal representation is provided each year without fee, CCNLS provides free advice and representation to many indigent people seeking various benefits under the Social Security Act, to include Supplemental Security Income (SSI) and Social Security disability benefits. CCNLS provides education and training regarding poverty law issues and access to public benefits, to include benefits under the Social Security Act, to the public, local government agencies, to other social service organizations and to members of the bar.

4. The Social Security Administration administers a number of federal programs, including the Social Security Disability and SSI programs. It keeps records in regard to decisions by Administrative Law Judges (ALJs) who conduct hearings regarding Social Security disability and SSI claims.

Facts

5. On August 2, 2002, the plaintiff's Senior Staff Attorney David Ralph mailed the attached EFOIA request to Hon. John R. Tarrant, Chief Administrative Law Judge, Office of Hearings and Appeals, 108 Jefferson St., Syracuse, NY 13902-2520. Said office is maintained by the defendant Social Security Administration as part of its Office of Hearings and Appeals, and it is a place where much of the information sought in the request originates or is kept.
6. On October 7, 2002, Mr. Ralph faxed HOCALJ Tarrant a second letter about not having received any response to the August 2, 2002 EFOIA request, to include the failure to respond in writing to acknowledge the request as such offices are required to do by the Social Security procedure and protocols for the Office of Hearings and Appeals contained in the HALLEX regarding receipt of FOIA requests. (See HALLEX I-1-4-2 which policy states that when a field office receives an FOIA request for documents or records other than certain publications, the receiving office must acknowledge the request in writing and promptly forward the request, together with copies of the requested material, to: Freedom of Information Officer, Social Security Administration, 4100 Annex Building, 6401 Security Boulevard, Baltimore, Maryland 21235.)
7. On October 15, 2002, HOCALJ Tarrant telephoned Mr. Ralph in response to the October 7, 2002 letter. ALJ Tarrant stated that he was "surprised" that the information had not been received since he and the Hearing Office Director, Ms. Carol Kaiser, had sent the requested material, to include computer data, on to the Regional Office [of the Office of Hearings and Appeals] in New York City, and that the information had been sent from there to "Central." ALJ Tarrant stated that an attorney in the Regional Office named Bonnie Muir was his contact. ALJ Tarrant stated that he felt the information was likely to be provided as requested as far as he knew.
8. On January 2, 2003, Mr. Ralph telephoned Bonnie Muir, Esq., in the New York City Regional Office, Office of Hearings and Appeals. Ms. Muir stated that indeed information had been received from the Syracuse Office of Hearings and Appeals and then sent on to the "Office of Disclosure Policy". Ms. Muir stated that the person to contact was named Ethel Burrows. Ms. Burrows was the defendant's Information Disclosure Specialist.
9. On January 2, 2003, Mr. Ralph spoke with Ethel Burrows, in the then Office of Disclosure Policy, Office of General Counsel, Social Security Administration, in Baltimore. Ms. Burrows stated that officials were on a holiday break and that within one week she would know whether they would be willing to provide any significant portion of

the information. Ms. Burrows agreed to speak with Mr. Ralph after one week had passed. A confirming letter was sent to Ms. Burrows by Mr. Ralph.

10. On January 15, 2003, Mr. Ralph telephoned Ms. Burrows again. Ms. Burrows indicated that she would still have to check with the "OHA" people and that she would call Mr. Ralph "tomorrow". That call was never made by her.
11. On April 11, 2003, Mr. Ralph spoke with Ms. Burrows again by telephone. Among her reactions, was her surprise that court action had not already been initiated. She stated that there was opposition from people in "high" places to responding to the EFOIA request. Ms. Burrows discussed what the defendant might be willing to send to CCNLS. She stated that she had before her the August request as she spoke. Ms. Burrows allowed as how the only data that might be willingly sent, in a short time period at least, was a "36Q" which would have some general statistics about the Syracuse OHA but nothing on individual judges numbers, locations in any way shape or form. Ms. Burrows stated that the Executive Officer in her office and the name of her office has changed since we first spoke:

Ms. Joyce Schaul
Freedom of Information Officer
Office of Public Disclosure
3A6 Operations Building
6401 Security Blvd.
Baltimore, MD 21325
12. It is apparent from these conversations with Ms. Burrows and the complete lack of action or response of any kind that little, if anything, has or will be done by the defendant to comply with plaintiff's EFOIA request.
13. In summary, 16 months have passed since plaintiff sent out its EFOIA request. Plaintiff has not received the information requested nor has the government ruled upon the EFOIA request.
14. Plaintiff, and other attorneys, have filed actions in this Court alleging that the defendant fails to provide a fair forum, in violation of various parts of the Social Security Act and its regulations, the Administrative Procedure Act and the due process clause of the Fifth Amendment to the Constitution of the United States, when it assigns a particular Administrative Law Judge of the Syracuse Office of Hearings and Appeals to the cases of disability claimants who reside in the catchment area of plaintiff. One such pending case is that of Anne Pronti v. Jo Anne Barnhart, 02-CV-6309L.
15. Pursuant to 5 USC §552(a)(4)(B), this Court can enjoin the defendant from improperly withholding agency records and can order the defendant to produce any records improperly held from the person who has filed the EFOIA request.
16. The defendant maintains highly detailed records which include all ALJ decisions in

Social Security disability and SSI cases. The plaintiff's EFOIA request seeks information extracted from such database records. The defendant has improperly withheld such records from plaintiff.

17. Under EFOIA, the defendant has the burden of justifying its decision to withhold requested information. 5 USC §552(a)(4)(B).
18. Under EFOIA, the defendant has 20 days to decide whether to comply with a request and shall notify the requestor of this in writing. 5 USC §552(a)(6)(A)(i). The defendant has not complied with this.
19. Under EFOIA, the requestor is deemed to have exhausted administrative remedies if the agency fails to comply within the applicable time limit. 5 USC §552(a)(6)(C).
20. None of the exemptions to EFOIA set forth in 5 USC §552(b) are present in this case.
21. By its actions, the defendant is in violation of EFOIA in regard to the plaintiff's request for information.
22. 5 USC §(a)(4)(A)(i-iii) states that documents shall be furnished without any charge or at a charge reduced below the fees established if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.
23. CCNLS has no commercial interest.
24. The public has an interest in the information sought in the EFOIA request because large numbers of individual people and their dependents are directly affected by the determination of their disability claims by the defendant's administrative law judges in the Syracuse Office of Hearings and Appeals. The public has an interest in the information sought in the EFOIA request because all of the taxpayers of the affected counties in the catchment area of CCNLS and of the Syracuse Office of Hearings and Appeals have a social and civic interest in claims in their community being decided fairly, and they all have an interest in the welfare of the community and in the effect upon the local economy if direct benefits are not paid properly and fairly to large numbers of citizens. The public at large has an interest because of the direct connection between the amount of their state and local taxes rates which pay for the cash assistance to and for the medical insurance for many totally disabled people dependent on local welfare and other subsidies who would otherwise be removed from county public assistance rolls if federal disability benefits were properly and fairly approved. The public has an interest from the direct connection between the amount of their state and local taxes rates which are higher if they must bear the full cost for disability claimants who receive health insurance from non-federally reimbursed Medicaid assistance as opposed to recipients of Social Security disability and SSI disability benefits whose health insurance has federal participation


through categorically related Medicaid and/or Medicare benefits. The public has an interest in the request for information because many applicants for SSI or Social Security disability benefits will only receive Medicaid and/or Medicare health insurance if they are approved for disability by the defendant's administrative law judges, an interest affecting the individual claimants, the hospitals and medical providers who can receive payment, and the taxpayers who must bear the fiscal and social consequences of residents who have no health insurance.

25. Plaintiff held off bringing any federal court action on this matter in the hope that the defendant would comply with its request, thereby obviating the need to take up Court time with this issue. However, the defendant's stonewalling of Plaintiff's EFOIA request has left plaintiff with little choice other than to seek this Court's intervention.

Wherefore, the plaintiff requests that this Court:

- a. Enjoin the defendant from improperly withholding the records requested by the plaintiff in his FOIA request dated August 2, 2002.
- b. Order the defendant to promptly produce the records requested by the plaintiff and retain continuing jurisdiction over the matter until complete compliance with the request in a manner in compliance with the broad public policy underlying the Act has been fully accomplished.
- c. Order the defendant to provide such information without charge pursuant to 5 USC §(a)(4)(A)(i-iii) as it is in the public interest.
- d. Grant the plaintiff filing fees and costs pursuant to 5 USC §552(a)(5).
- e. Grant the plaintiff such other relief as it may deem proper and just in the circumstances..

Dated: December 24, 2003
Elmira, New York


DAVID E. RALPH, Senior Staff Attorney
for the Plaintiff

Chemung County Neighborhood Legal
Services, Inc.
215 E. Church St., Ste 301
Elmira, New York 14901
Telephone: 607-734-1647

CHEMUNG COUNTY NEIGHBORHOOD LEGAL SERVICES, INC.



215 E. Church Street, Suite 301
Elmira, NY 14901

(607) 734-1647
Fax (607) 734-1018

August 2, 2002

Hon. John R. Tarrant
Chief Administrative Law Judge
Office of Hearings and Appeals
108 Jefferson St.
Syracuse, NY 13902-2520

RE: Electronic Freedom of Information Act Request (E-FOIA)

Dear Judge Tarrant:

This office represents several individuals with appeals pending in the Office of Hearings and Appeals, the Appeals Council or the United States District Court regarding the denial of SSI and/or Social Security disability benefits.

In connection with those appeals, in connection with the public interest in this region of the State of New York in such appeals, and in connection with the State and local governmental interests in the outcome of such appeals for residents of this region of the State, a Freedom of Information Act (FOIA) demand is hereby made under The Electronic Freedom of Information Act Amendment of 1996 for information kept both in digital computer format or media as well as certain records kept in traditional paper records.

Since technology has changed since FOIA was enacted three decades ago, the statutory definition has been expanded to specifically include Federal records and information maintained electronically. This includes specific formats such as databases, E-mail, personal computers, diskettes and CD-ROMs. The new law stipulates that agencies shall provide records in any form or format requested by the person, if the record is readily reproducible by that agency in that form or format. The legal response period has been extended from 10 to 20 working days to process a FOIA request.

The following information is sought in this request:

I. Information in digital media, preferably on diskettes or CD-ROM (however, we will accept whatever media the agency is able to provide), extracted from the Hearing Office Tracking System or "HOTS" database maintained for the Syracuse, New York Office of Hearings and Appeals from November 1, 1994 through July 31, 2002 in the following respects.

1. An electronic or digital copy of all HOTS system entries in their native database format for all cases closed during the above time period following final action by an ALJ whether it be by dismissal, remand or decision. Only those fields in the database that permit identification of the individual claimant or other persons associated with the claims file in should be omitted from individual database records, namely,
 - a. the claimant's name "NAME",
 - b. Social Security Number "SSN",
 - c. Cross Reference Name "XREF"
 - d. Cross Reference Social Security Number "XREF SSN"
 - e. addressee "ADDRESSEE",
 - f. claimant's address "CLMT ADDR",
 - g. claimant's telephone number "PH",
 - h. Non-attorney representative's data fields: "REP NAME", "REP ADDR", "REP CITY", "REP ST", "REP ZIP".
2. It is essential that all other data fields remain in the database information returned pursuant to this request. For instance, in each record the identifying information as to the Administrative Law Judge "ALJ" is necessary as individual ALJ approval and disapproval rates and several other characteristics are the primary reasons this request has become necessary both to protect our clients and also the public interest.

Similarly, claimant's City "CLMT CITY", claimant's state "ST", claimant's Zip Code "CLMT ZIP", and the hearing site "HEARING SITE" are absolutely essential information for geographic and political subdivision indicators since it is believed that citizens who have hearings in this region of the State of New York suffer substantially more denials and go through substantially more appeals and Appeals Council and District Court remands and obtain substantially fewer benefits than do other citizens who have hearings elsewhere in New York State (or the Nation for that matter) or with different ALJ's handling their cases.

Additionally, the State of New York has estimated the average amount of economic gain or harm that results from disability benefits being granted or denied to recipients of various forms of public assistance, which an economic consequence that is shared by the taxpayers of individual counties as well taxpayers of the State since the counties pay for a share of all public assistance and medicaid expenses along with the State, disproportionately, we believe, in this area of the State.

It is of important public interest, to the public and governmental units and their citizenry generally, to know in which geographic and political subdivisions of the State claimants are treated equally or disproportionately worse than claimants

located in other areas of the State or Nation.

Information as to the nature of the disabilities noted on the database is needed since there is some reason to believe that certain illnesses may result in aberrant rates of denial or approval compared to other ALJ's in general or experienced in other areas of the State or Nation.

Information as to remands, past applications, Appeals Council actions or District Court actions are needed to compare such rates to other ALJ's or other areas of the State or Nation, which we believe are disproportionate.

II. The following information for the time period of November 1, 1994 - July 31, 2002 is sought from what are believed to be traditional paper records. However, please note, we are prepared to accept any of this information in standard wordprocessor file formats such as WordPerfect up to Ver. 6-7-8 or in Microsoft Word up to Word 2000 or other standard wordprocessor formats readable by these programs.

1. A copy of the instruction or training materials used by persons who enter information into the HOTS database so that all fields can be identified and so the kinds of information and the criteria for entry of information into each named data field can be identified.
2. The names of ALJ's together with the ALJ identifiers for the HOTS database for all ALJ's in the Syracuse Office of Hearings and Appeals during the above time period.
3. The names and job titles of all attorneys, such as opinion writers, staff attorneys, etc. employed or working at the Syracuse Office of Hearings and Appeals during the above time period, indicating whether such persons presently work at the Syracuse of Hearings and Appeals or what other part of the Social Security Administration.
4. A description, such as by county name or zip code and state, of the geographic area covered by ALJ's of the Syracuse Office of Hearings and Appeals.
5. A description, such as by county name or zip code and state, or other characteristics of claimants whose hearings are held at remote hearing locations such as Corning, New York or locations other than Syracuse, New York for cases at the Syracuse Office of Hearings and Appeals.
6. A copy of the list of the illness or disease or injury or other such codes together with the corresponding injuries, illnesses or conditions represented by such codes used for entry of information into the HOTS database; *e.g., International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM) or the International Statistical Classification of Diseases and Related Health Problems, Tenth Revision (ICD-10).*
7. A complete copy of all monthly or annual statistical reports to the Regional Office

in New York City or to the Social Security Administration from the Syracuse Office of Hearings and Appeals during the above period which convey information in the nature of the number of cases opened, pending, determined, benefits granted and denied, and cases remanded from the Appeals Council or United States District Court.

III. It is requested that the above information be provided without charge pursuant to the FOIA statutory requirements. Disclosure of the information is in the public interest. Disclosure of the information is likely to contribute significantly to public understanding of the operations or activities of the Social Security Administration appeals and decision process. The information not in the nature or kind that fit into a commercial venture of the requester and is not made primarily for the commercial interest of Chemung County Neighborhood Legal Services, Inc.. Chemung County Neighborhood Legal Services, Inc. is incorporated under the laws of the State of New York as a non-profit charitable corporation to provide civil legal services to the indigent and to promote justice in the area we serve. As a recipient of funding, in part, from the Legal Services Corporation and from the New York IOLA Fund of the State of New, this organization is prohibited from and does not charge any fee to its clients and is prohibited from accepting such from its clients. As such, fees for the delivery of the requested information should not be charged.

Although I believe that your Honor is the most appropriate person to whom to submit this request, if someone else is the appropriate person, would you please both forward this request on and also inform me of the action that you take.

This is not an easy or pleasant request to make. Circumstances compel it, and it should have been made a long time ago. Thank you for your consideration.

Yours truly,

David E. Ralph

CHEMUNG COUNTY NEIGHBORHOOD LEGAL SERVICES, INC.



215 E. Church Street, Suite 301
Elmira, NY 14901

(607) 734-1647
Fax (607) 734-1018

October 7, 2002

SENT VIA FAX # 315-423-6544

Hon. John R. Tarrant
Chief Administrative Law Judge
Office of Hearings and Appeals
108 Jefferson St.
Syracuse, NY 13902-2520

RE: Electronic Freedom of Information Act Request (E-FOIA)
Dated August 2, 2002

Dear Judge Tarrant:

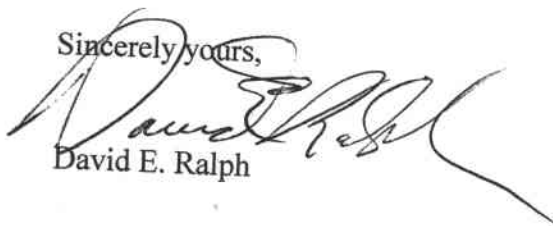
This is a follow up on the E-FOIA request addressed to the Hearing Office Chief Administrative Law Judge, mailed on August 2, 2002 and presumably received at OHA Syracuse on Monday, August 5, 2002. Telephone communication from ALJ Medicis confirmed that the request was received. As you may or may not know, the request has not yet been answered.

In the letter, I asked that you please inform me if you were not the appropriate person to whom to have sent the request and to please inform me of what action you took if you were not the appropriate person. The HALLEX similarly requires that an acknowledgment of the receipt of such a request should be made and then the request sent on to the appropriate official. Further reading of the HALLEX and the regulations reveals to me that you are likely not the appropriate official who can act on the request.

Therefore, would you please let me know what action you have taken or are taking in regard to the request. I am, of course, happy to discuss this with you or to answer any questions that you may have.

Thank you for your courtesy and attention.

Sincerely yours,



David E. Ralph

CHEMUNG COUNTY NEIGHBORHOOD LEGAL SERVICES, INC.



215 E. Church Street, Suite 301
Elmira, NY 14901

(607) 734-1647
Fax (607) 734-1018

January 2, 2003

Ms. Ethel Burrows
Office of Disclosure Policy
Office of General Counsel
6401 Security Boulevard
Baltimore, MD 21235

RE: August 2, 2002 Electronic Freedom of Information Act Request (E-FOIA)
By David E. Ralph for Chemung County Neighborhood Legal Services, Inc.

Dear Ms. Burrows:

This letter is to confirm our telephone conversation on the afternoon of January 2, 2003. I appreciate knowing where our request for information is.

While I can be flexible on particular items sought in the request for information, getting a paper "report" or summary is not too likely to meet our needs. We need the data in a reasonable digital format which we can collate via computer with our own technical resources. For instance, we need hard data to track ALJ rotations through remote sites for hearings, to be able to track individual ALJ approval/denial/dismissal rates, to be able to identify the location of claimants by zip code to correlate with the economic cost/benefit to local public assistance districts and the human cost of living here, and to identify whether our own internal indicators regarding whether particular disorders have been treated in a disparate fashion are valid. We have suspicions regarding some ethnic characteristics and approval rates that this request is less likely to shed light on.

We are not doing this because of any idle curiosity. We believe from years of experience that this geographic area and its residents have been treated unfairly. The data are needed to validate or disprove our suspicions and to possibly lead to a solution if we are correct.

I will check back with you in about one week after the people you referred to have returned from their holiday break.

Thank you.

Yours truly,

David E. Ralph

